

***United States Court of Appeals  
for the Second Circuit***



**SUPPLEMENTAL  
APPENDIX**





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75-1073

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## United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

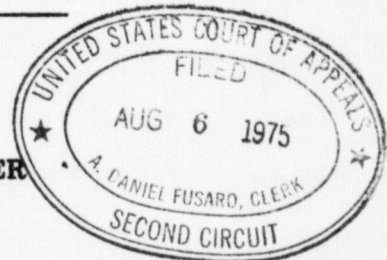
ISRAEL DIAZ-MARTINEZ,

Defendant-Appellant.

*On Appeal From The United States District  
Court For The Eastern District Of New York*

### SUPPLEMENTAL APPENDIX

ZUCKERBERG, SANTANGELO & MAHLER  
Attorneys for Defendant-Appellant  
118-21 Queens Boulevard  
Forest Hills, N.Y. 11375  
(212) 468-5565



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## PERTINENT DOCKET ENTRIES

May 30, 1975 --- BEFORE MISHLER, CH.J.

Motions denied as indicated on the  
record, bail limits extended to Puerto  
Rico between June 1, 1975 and July 10,  
1975 to deft DIAZ-MARTINEZ

June 9 - Notice of appeal from order denying  
motion for new trial (DIAZ-MARTINEZ)

July 9 - Transcript dated 5/30/75 filed.

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA, :  
5 - against - : 74-CR-403  
6 ISRAEL DIAZ-MARTINEZ, :  
7 Defendant. :  
8 -----x

9  
10 United States Courthouse  
11 Brooklyn, New York  
12 May 30, 1975  
13 11:30 o'clock a.m.

14 B e f o r e :

15 HONORABLE JACOB MISHLER,  
16 CHIEF U.S.D.J.  
17  
18  
19  
20  
21

22 JOSEPH BARDELLA  
23 OFFICIAL COURT REPORTER  
24  
25

1        A p p e a r a n c e s :  
2

3        DAVID G. TRAGER, ESQ.,  
4                United States Attorney for the  
             Eastern District of New York

5        BY:        STEVEN KIMMELMAN, ESQ.,  
6                Assistant U.S. Attorney

7        MESSRS. ZUCKERBERG, SANTANGELO & MAHLER,  
8                Attorneys for defendant.  
9                118-21 Queens Boulevard  
             Forest Hills, New York 11375

10        BY:        STEPHEN R. MAHLER, ESQ.,  
11                Of counsel.

12                \*   \*   \*   \*   \*   \*   \*  
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1 THE CLERK: Criminal motion, United States of  
2 America versus Israel Diaz-Martinez.

3 MR. KIMMELMAN: Your Honor, we are here on  
4 the defendant Israel Diaz-Martinez' motion to set  
5 aside the verdict on the basis of what is termed new  
6 evidence, that the Government withheld certain  
7 information within its possession that is deemed to  
8 be Brady -- by the defendant, to be Brady material  
9 and/or 3500 material.

10 THE COURT: Is the appeal set down for argument?

11 MR. KIMMELMAN: The appeal has been adjourned  
12 for argument.

13 THE COURT: This is the one.

14 MR. KIMMELMAN: Pending a determination in  
15 this court and the possible appeal of your Honor's  
16 decision.

17 THE COURT: All right.

18 MR. KIMMELMAN: Your Honor, because this is  
19 the defendant's motion, I believe that the burden  
20 should be on the defendant to prove the allegations  
21 set forth in his motion. I have asked that Mr.  
22 Rodriguez, who is the subject of the motion, and  
23 Mr. Abbott, who is the agent who is responsible for  
24 the federal investigation, be present, if they  
25 should -- if Mr. Mahler wishes to call them as  
witnesses.



1 THE COURT: All right, let's call them.

2 MR. MAHLER: I would like to call Rodriguez.

3 THE COURT: Do you know the index was misfiled?

4 MR. KIMMELMAN: No, sir. The Clerk just  
5 indicated to me --

6 THE COURT: Wait a while. Isn't that the  
7 Court of Appeals number?

8 All right.

9 S A U L R O D R I G U E Z, called as a witness,  
10 being duly sworn by the Clerk of the Court, testified  
11 as follows:

12 DIRECT EXAMINATION

13 BY MR. MAHLER:

14 Q Detective Rodriguez, would you tell the Court  
15 by what bureau you are employed?

16 A I am employed by the New York City Police  
17 Department assigned to the Organized Crime Control Bureau,  
18 Narcotics Division, Brooklyn South and Richmond.

19 Q Are there times when they work jointly with  
20 the federal detectives?

21 A Yes, sir, there are.

22 Q In fact, this bureau coordinates, do they not,  
23 the Federal and State activities?

24 A That's way above my level. I couldn't answer  
25 that question. There are times when there are joint

1  
2 investigations. I am not going to say they coordinate them.  
3 I'm sure it's a joint effort.

4 Q Now, do you recall your investigation concerning  
5 293 Grand Street, in that vicinity?

6 A I recall some of it, yes.

7 Q Do you recall the first date on which you  
8 began that investigation?

9 A I believe it was in October of 1973.

10 Q Could you be more specific? First, could you  
11 tell us the date?

12 A I haven't got the file with me, sir.

13 Q Do you recall testifying at the trial of  
14 Manuel Fiffe and Victor Blanco in March of 1975, in the  
15 Kings County Supreme Court?

16 A Yes, I testified at that trial.

17 Q Do you recall testifying at that time that  
18 the operation began -- the very first contact with 293  
19 Grand Street was October 25, 1973?

20 A I haven't got the file with me. Like I said,  
21 I know it began in October of 1973.

22 Q Do you have any of your notes with you today  
23 to refer to?

24 A Just what I used on -- in this courtroom, in  
25 the trial of Israel Diaz-Martinez.



Q Is there a note somewhere which would indicate the exact date that you started the investigation?

A No, sir. The file is at the Brooklyn South office.

MR. MAHLER: Your Honor, I am sorry. I have a page reference somewhere in here that -- as to his exact testimony. I thought he would have his notes with him.

If your Honor gives me a moment, I think I can find it.

Q Officer, do you recall being asked this question and giving this answer during the trial of Manuel Fiffe and Victor Blanco? I am referring to page 162 of that transcript:

"Question: Officer, this particular operation that you were involved in was called 'buy operation 560'?"

"Answer: Yes, sir, it was.

"Question: And when did that buy operation begin?

"Answer: Buy operation 560 began in October of 1973.

"Question: When you said October of '73, can you be a bit more specific? Was it the beginning of

October?

"Answer: It was toward the end of October of '73.

"Question: Would you have an exact date? Can you refresh your recollection by referring to your notes if you want?

"Answer: The number 560 was obtained on that first date that I bought the half ounce of cocaine from the defendant. That was October 26, 1973. That's when operation 560, the number, came into being.

"Question: Are you telling me that's when the operation began?

"Answer: No. It actually began on October 25th, when I first met the defendant Victor Blanco and Manuel Fiffe."

Do you remember being asked those questions and giving those answers?

A Yes. Yes, sir, I do.

Q Would you agree that the very first time you were involved in -- with Fiffe and Blanco or anything that had to do with this case or with 293 Grand Street was October 25, 1973?

A That's about it, yes, sir. That's the overall buy operation.



Q Now, do you recall testifying during the trial of Mr. Diaz-Martinez in this court?

A Yes, sir. I remember when I was here.

Q Referring specifically this time to page 523 of the file transcript of this court:

Do you recall being asked these questions and giving these answers?

"Question: Now, you have testified, I believe, as to how you know Mr. Diaz, how you know him prior to that evening; is that right?

"Answer: Yes, sir."

Do you recall in what context I was asking you these questions, officer?

A What evening are you referring to? It's pulling it right out of context.

MR. KIMMELMAN: Excuse me, your HONor. I'm going to object to this procedure. If Mr. Mahler wants to refresh this witness' recollection, it would be much simpler if he would show him the transcript.

THE COURT:: I will allow him to do it this way.

Q Do you recall -- did you testify in this court that on the evening of January 17, 1974, you walked into Jose's Bar and that you recognized the defendant Israel

Diaz-Martinez? Do you recall?

A Yes, sir.

Q Do you recall that?

A Yes, sir.

Q Do you recall that you testified that you knew him because you met him once before?

A I had seen him at the clothing store at 293 Grand, yes.

Q Now, the question that I asked you is:

"Question: Now, you have testified, I believe, as to how you know Mr. Diaz, as to how you knew him prior to that evening; is that right?"

And your answer was,"

"Yes, sir.

"Question: Will you tell us how you did know who he was?

"Answer: I had seen him in the clothing store where I had met Mr. Fiffe.

"Question: On what occasion? I mean on what date?

"Answer: It was on October 15th, I believe.

"Question: Did you make any notes of that anywheres?

"Answer: That I had seen him?



Rodriguez-direct

10

"Question: Yes.

"Answer: No, sir.

"Question: Is it your testimony that you didn't speak to him on that day?

"Answer: I said, hello, how are you. And I walked to the back of the clothing store and into the basement."

Do you remember giving --

A No, it's November 15th, if anything. The operation began -- the buy operation 560 was given that number on October 26th. I had met one of the defendants of that operation on October 25th. That answer should be -- and I believe if you go further on into the record, it's corrected to November 15th, 1973.

Q Well, on page 1524 the question is:

"Anyone else present in the store?

"Answer: No, sir. Not that I can recall.

"Question: This was November 15th?

"Answer: I believe it was on November 15th."

A Yes, sir.

Q Is that when it's corrected?

A It's when it's corrected, yes, sir.

Q Now, it's your testimony now that you corrected that?

1  
2 A It's my testimony now that the answer is  
3 November 15th or about November 15th, as I answered on that  
4 date.

5 Q Now, when you began operation 560, were you  
6 aware of any federal involvement at that time?

7 A No, sir, I was not.

8 Q When did you first become aware that there  
9 were federal officers making the -- almost the same -- the  
10 exact same investigation?

11 A Couple of months after the operation began.

12 Q When you say a couple of months, would that  
13 be January, 1974?

14 A I can't give you an exact date. I was in  
15 undercover in that operation. Finding out if anyone else  
16 was investigating, that area is up to the backup team. I  
17 know there are IBM cards that are submitted into a computer.  
18 And that's how it was found out that there were other  
19 authorities investigating those subjects in that area.

20 Q Would you agree with me that they were watching  
21 the same exact clothing store during the weeks of roughly  
22 October 25th through November 20th?

23 A Would I agree with you?

24 Q Yes.

25 A I don't know what they were watching. I can't  
agree to that.



MR. KIMMELMAN: Your Honor --

THE COURT: Objection sustained.

Q Now, have you since learned that that was the case?

A They conducted their investigation. We conducted our investigation. When it was found out that there were two authorities investigating that area, both authorities came together. Now, as to what they saw or what they did is --

Q Have you since learned that they were both watching 293 Grand Street?

A Yes, sir, I have.

Q Have you since learned that they were watching 293 Grand Street roughly between the weeks of October 25th and November 20th?

A I don't know when they were watching it. Like I said, I was undercover in that operation. I never read their federal reports.

Q You wouldn't be the one that would know those things; is that right?

A Only if I am told. No, I don't recall being told that between the weeks of October 25th and November 7th, or whatever they were. I was never told that.

Q Do you think that if, on the same day, that

1 a federal car was sitting on one end of the street, and a  
2 State car was on the other, do you think the lookout teams  
3 would know about each other?  
4

5 MR. KIMMELMAN: Objection.

6 THE COURT: Objection sustained.

7 Q Now, you filed certain DD5's on your State  
8 case, did you not?

9 A For the buy operation?

10 Q Yes.

11 A Yes, sir, I did.

12 Q And those DD5's involved your investigation  
13 of 293 Grand Street, did it not?

14 A Some of those investigation reports pertained  
15 to that.

16 Q How many reports did you file?

17 A I filed almost every time I met any of the  
18 defendants. I would file a DD5 -- anytime I made a buy in  
19 that operation, I would file a report. Numerous buys. For  
20 numerous buys, numerous meets.

21 Q Now, when I asked you, do you recall -- I am  
22 referring to page 1507 of the federal court trial transcript.

23 Do you recall me asking you these questions  
24 and you giving these answers:

25 "Question: You have been handed something



that has now been marked as a Government exhibit number 3500-22. It's a DD5. Is that what you referred to it as?

"Answer: Yes, sir.

"Question: Do you have the prior DD5 in this one that relates to the investigation?

"Answer: Yes, I do. Yes, sir, I do.

"Question: Did you have them with you?

"Answer: It's one. Yes, sir.

"Question: This is not the only DD5 in this case, is it?

"Answer: That's the only one, yes, sir.

"Question: Where is your initial report?  
This is a follow-up report; am I correct?

"Answer: Initial report is the overall investigation.

"Question: UF-49?

"Answer: My investigation.

"Question: UF-49?

"Answer: No.

"What do you call that?

"Answer: UF-61, report of investigation."

Do you remember me asking you those questions and you giving those answers?

1  
2 A Yes, sir, I do.

3 Q But in actuality, there were several DD-5's  
4 were there not? Concerning 293 Grand Street and this  
5 general -- and this general investigation?

6 A Yes. There were several. The way you use that  
7 word, you used two questions, investigation and case. On  
8 that date, the trial that was before the court was Israel  
9 Diaz-Martinez and two other defendants. You asked for the  
10 investigation reports pertaining to Israel Diaz-Martinez  
11 which I had typed out. And that's the only one that I gave  
12 you. The only one that I typed out.

13 Q Did you ever tell --

14 A And then, you're putting it out of context.

15 Q Did you ever tell Mr. Kimmelman that you had  
16 an investigation of several months concerning Mr. Fiffe and  
17 Mr. Blanco and Mr. Miranda and all the other people  
18 involved in this case?

19 A Did I ever tell him?

20 Q Yes.

21 A He knows about it now. Yes, sir.

22 Q Did you tell him back at that time?

23 A He was aware of it, yes, sir.

24 Q And did you tell him that there were other  
25 DD5's involved concerning all of those people?



1  
2 A I gave Mr. Kimmelman any information that he  
3 requested.

4 Q Did you tell him that there were other DD5  
5 reports; that there were other reports that you filed,  
6 several--- in fact, concerning the store at 293 Grand Street  
7 and the general investigation of all those people involved?

8 A Mr. Kimmelman asked if I had any information  
9 on Israel Diaz-Martinez. If I had any. He asked me if I  
10 ever had any meets with Mr. Martinez. And I stated that I  
11 did.

12 He told me that Israel Diaz-Martinez would be  
13 going on trial in federal court and I was subpoenaed to  
14 appear before the Court on Israel Diaz-Martinez.

15 Q Now, when you testified here, you testified,  
16 as we just found out, that you had initially met Mr. Martinez;  
17 that the reason that you recognized him in the bar on  
18 January 17th was because you had met him previously,  
19 correct?

20 A That's correct, yes, sir.

21 Q And you said you had met him previously  
22 either on October 15th or November 15th?

23 A No. That was corrected now. It is now  
24 November 15th.

25 Q We used your date November 15th, right?

A Or thereabouts. That's correct.

Q Now, you have DD5's concerning your activities on that particular day, do you not?

A If I made a buy, I would make out a buy report, yes.

THE COURT: Is there -- does the DD5 show that you met Mr. Diaz?

THE WITNESS: No. It shows that I made a buy in the store on that day or thereabouts. I don't have the DD5's with me.

If Mr. Martinez had committed a crime, I would have included him in my DD5.

Q Don't you make observations in your DD5's?

A Sometimes I do, yes, sir.

Q But your DD5's cover --

A When I initially met Mr. Martinez, I did not know who he was. I did not know. I had information that he was involved, but he never committed any crimes and he never committed any overt acts to my -- other than him being at the store.

Q Do you put down a JD description of the people there?

A The people that I bought from? Yes, sir, I do.



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Q Did you make a report that concerns your activities on November 15th inside of 293 Grand Street?

A On November 15th, or thereabouts, yes, sir, I would. The buy reports now.

Q The buy reports.

A I don't necessarily include everyone that is in the area. I would end up with a -- with a DD5 several pages long. I concentrate on the major and -- the major subjects who were committing the crime. The major things that are happening. I don't concentrate on every single person that is in the store.

Q All right, officer.

Will you answer my question?

A I concentrate on --

Q I understand. But I would like you to confine your answer to my questions.

A I am trying to let you know how I work.

Q Thank you.

When you testified in this court that you had met Mr. Diaz-Martinez previously, you were referring to the incidents in the store on November 15, 1973, were you not?

A Or thereabouts. Yes, sir.

Q You had DD5's covering that incident, did you not?

A What incidences now?

Q Yes or no?

A What incidences?

Q Your buy at 293 Grand Street on November 15th,  
1973.

A November 15th or thereabouts, yes, sir.

Q Or is there another date now involved?

THE COURT: Objection sustained. The witness  
said he cannot be sure that it is the 15th.

Q Now, you say you became aware of the federal  
operation concerning this matter in January of 1974?

A I never said that. I said I learned that  
after the investigation began, that there was a federal  
investigation into that area and into those subjects. I  
didn't say January of '74.

Q When did you learn about it?

A Sometime after the operation began. I  
believe it was a month, two months.

Q Well, a month or two months would either be  
December or January; is that right?

THE COURT: You'd like to tie the witness to  
a particular day, day of the week, time, night or  
day.

MR. MAHLER: Judge, I am not being that  
specific. I would like a month. I don't think that



is unreasonable.

THE COURT: It's unnecessary. It's irrelevant.

That's the point.

Q What time of the year did you learn about the federal investigation?

A Wintertime.

Q That's 1974, correct?

A Or late '73.

Q And did there ever come a time when you combined your operations with the federal offices?

A I think -- to my knowledge, myself and the backup team was out only at the time of arrest. When the arrests were made, it was a combined effort.

Q That was on June 21st or thereabouts?

A That was in June of '74.

Q And is it your testimony that even though you knew about the federal operation in January of 1974 or thereabouts, the winter of '74, late '73, that you just kept going upon your separate ways and doing your separate investigation?

A I never testified as to that, no, sir. I -- I didn't testify to that. I didn't say that.

Q Is that your testimony now?

A I didn't say it. You're asking me a question.

Q I am asking you now --

THE COURT: Mr. Mahler is suggesting that he wants you to adopt -- you see, he's telling you that even though you knew that the investigation was on, you kept going separate ways.

THE WITNESS: I knew about the New York City investigation and I knew that every so often, the backup team and myself on one or two occasions would meet with the federal authorities and exchange information. As to the federal investigation, I don't know what -- how they investigated. But I know that we would exchange information.

THE COURT: Do you plan and give orders on investigations or do you take orders?

THE WITNESS: I mostly take orders. Unless it pertains to an undercover.

THE COURT: Is it your decision as to when you join forces with the federal authorities?

THE WITNESS: No, sir.

That's a lieutenant, sergeant or captain's.

THE COURT: Those are the questions. Did you and the federal investigators get together?

He's an undercover agent.

Q My question to you is this:



After January -- between January and June of 1974, did you ever work in association with federal agents concerning this case, concerning the investigation of Fiffe and Diaz-Martinez and Blanco?

A If you want to call an exchange of information, working -- yes, we did. If you want to call that -- did I ever go out with one of the federal officers or did I ever make a buy for a federal authority -- no, sir, I did not.

THE COURT: Mr. Rodriguez, just testify to what you did.

Q You exchanged information; is that correct?

A That's correct.

Q At what point did you exchange information?

A After we found out that there was --

THE COURT: You are saying, "we." What did you do?

THE WITNESS: After I found out that there was a federal investigation into that area, and into those subjects, I got together with the backup team, and I also met with federal authorities and I exchanged information.

Q When was that? Approximately?

A After we found out that there were two

investigations, that there was a city investigation and there was a federal investigation.

Q Was that also about January, '74?

A After we found out, yes, sir. And there were several meetings between federal authorities and city authorities.

THE COURT: Were you at the meetings?

THE WITNESS: I was at one or two. Yes, sir. It was an informal meeting. Federal authorities would come in the office and we'd talk about their information and about out information.

Q And the investigation continued to June; is that right?

A Yes, sir.

Q And was there further cooperation of the months of January, February, March?

THE COURT: Only tell us what you know, what you did; not what you think somebody else did.

THE WITNESS: The meetings? The meetings and exchange of information?

Q This continued from January through June.

A I would say it did, yes, sir.

THE COURT: Did you turn the reports over to the federal authorities?



THE WITNESS: No, sir, I did not. I turned my reports over to the City police department.

Q And you don't know what they did with their reports -- with the reports; is that right?

A They filed -- I don't -- I don't watch the reports.

Q When you say you exchanged information, what do you really mean? Can you explain that to us?

A That if they had information on the subject that we were watching, or if we had information on a subject that they were watching, we would tell them what plate number or what kind of car he drives, where he might live.

If they had information -- if we had information that they were to hit a warrant, we would tell them whether it was an appropriate time to hit a warrant, whether I would be in the area. You know, things like that.

Q You would tell them about your observations, too, don't you?

A I told them, if -- if they requested information, I would give it to them, you know.

Q You would show them what DD5's you had?

A No. Basically it was all -- no. It was an informal thing, you know. It wasn't, "Here are all my reports. Let me see your reports." It was all informal.

Q Now, in the State trial, referring to page 110 of the minutes, you testified that when you met Victor Blanco, he said, "Are the shirts in?"

Do you remember that?

A I remember that phrase, yes, sir.

Q And you took that to be a code message; isn't that right?

A That's what it was, yes, sir.

Q It was supposed to be, "Was the cocaine in?" Isn't that right?

A Yes, sir.

Q Did you ever tell that to the Federal people?

A Once again, these meetings were informal. As -- did I tell them --

THE COURT: What has this got to do with your claim that certain reports were kept from you for cross examination?

MR. MAHLER: Because I want to show that it's highly improbable that the same people, testifying in different courts to almost the same conversations with the defendants here, Blanco --

THE COURT: Different trials.

MR. MAHLER: At different trials.



THE COURT: Different trials, different people, right?

MR. MAHLER: Right.

THE COURT: You don't have the same testimony. If he's charging him with a narcotics offense, why should he give a lot of testimony about what B, C, and D did? You want exactly the same testimony as long as it's the same conspiracy, right?

MR. MAHLER: I'm trying to show this was a joint operation at all times. The federal government--

THE COURT: Look, I am not retrying the Diaz case. You made a claim here. Here are the witnesses. I will take testimony on the claim.

Q And now you have testified that when you first met Fiffe -- you correct me if I am wrong -- that Fiffe took you to Knickerbocker and Gates Avenue for the buy; isn't that correct?

A Yes, sir.

Q Am I right? Is that right?

A Yes, sir.

Q What is located at Knickerbocker and Gates Avenue?

A What's located -- it's a residential area. You have stores.

Q Is that the area of the Estrella record shop?

A I don't know. I have never went there, to the Estrella record shop.

Q Have you later learned that that was the area where the Estrella record shop was located?

A No, sir, I did not.

MR. KIMMELMAN: Your Honor, I'm going to object to the relevancy of these questions.

THE COURT: All right, he's already answered. What is the claim you are making here?

MR. MAHLER: I am making the claim that Mr. Fiffe was an entirely independent operator. And had I known that, and had I had this information at the time of the trial, I could have cross examined him. He took these officers to the Estrella record shop which was involved with --

THE COURT: Do you want to testify or is he testifying? You're saying they withheld certain information.

MR. MAHLER: That's correct.

THE COURT: That they -- that the State did, not that Mr. Kimmelman did.

MR. MAHLER: I think Mr. Kimmelman did also.

THE COURT: All right. Where is the



information? In a document?

MR. MAHLER: In a document.

THE COURT: Why don't you find that out instead of asking him how he testified in -- how he testified in another case?

MR. MAHLER: I asked him for the DD5's in the case.

THE COURT: If you've got all the answers, then the hearing is at an end.

Q Do you have your other DD5's with you?

A No, sir. I never went to the Estrella record shop nor did I know that the Estrella record shop was in that area.

Q How many DD5's or other reports would you estimate that you made in connection with these cases?

A In reference to the whole case, I'd say about -- over a dozen in reference to the whole buy operation.

Q Right. 560?

A That's correct. DD5's or CCB buy reports where I put in a lot of facts.

Q And your other brother officers, they made their own reports, did they not?

A I hope so, yes, sir.

Q So you would say there were more than

probably two dozen, correct?

A Yes, sir.

Q Do each of the officers -- did each of your officers have to make their own reports?

A If an officer is working with another officer and they make observations, they make out one report and both officers sign it.

Q How many officers were working on this detail?

A This investigation encompassed about a half dozen officers. About.

Q So you would have about a half dozen officers making reports concerning the investigation?

A Not at any given time. During the whole investigation, yes, sir.

Q Would you turn any of these reports over to Mr. Kimmelman?

A Did I? No, sir.

Q Did he ask you questions such as I am asking you now?

A He asked me questions regarding Israel Diaz-Martinez.

Q Well, Israel Diaz-Martinez was part of the entire investigation, was he not?



1  
2 A He wasn't the subject of a buy which -- as  
3 were all the other subjects of that investigation.

4 Q But he was under investigation by you?

5 A Yes, sir.

6 Q Yes, correct?

7 A Yes, he was.

8 Q And you suspected that he was the owner of  
9 that store, did you not?

10 A Yes, sir.

11 Q Did you tell Mr. Kimmelman?

12 A You're talking about the clothing store?

13 Q The clothing store.

14 A Yes, sir.

15 Q Did you tell Mr. Kimmelman that there were  
16 all these reports in the State file?

17 A About the whole buy operation?

18 Q That there were all these state DD5's,  
19 whatever reports --

20 THE COURT: All these reports and --

21 THE WITNESS: No.

22 THE COURT: And you guess what Mr. Mahler  
23 means.

24 THE WITNESS: No.

25 THE COURT: All these reports.



THE WITNESS: No. You see, the buy operation --

Q You just testified, correct, that there would have to be at least two dozen reports in this case; correct?

A Yes, sir.

Q Did you ever tell Mr. Kimmelman about such reports?

A I told him we had a buy operation. And that's about it. You know --

Q Did he ever ask you, were there State reports involving this operation?

A He asked me if I ever wrote out a DD5 on Martinez. And I stated I had, yes.

Q Did he ever ask you how many reports are involved in this particular case?

A Mr. Kimmelman wasn't prosecuting the State case. He wasn't --

THE COURT: Mr. Rodriguez, did you go over your reports recently?

THE WITNESS: Reports?

THE COURT: Yes.

THE WITNESS: No, sir, I have not.

THE COURT: Do you know whether there is anything in those reports that in any way contradicted testimony that you gave?

THE WITNESS: No, sir, there isn't.

THE COURT: Is there any information in those reports that would in any way point to the innocence of the defendant Diaz?

THE WITNESS: No, sir, not at all.

THE COURT: Is there any objection to submitting those reports to the Court in camera? Is there any objection to submitting the reports?

THE WITNESS: No, sir. If you would like to review the whole investigation, you can go right ahead.

MR. KIMMELMAN: Your Honor, we would have no objection to submitting them in camera. Also, there is a trial upcoming involving Mr. Mahler -- Juanita Guzman, Mr. Mahler's client.

THE COURT: I see.

MR. KIMMELMAN: I imagine that some of these reports contain information relative to that upcoming State trial. But we would have no objection to the Court examining it in camera.

THE COURT: I will look at the reports.

MR. KIMMELMAN: The witness doesn't have them with him, but I am sure there is no difficulty in producing them.



Rodriguez-direct

33

Is that right?

THE WITNESS: I have to call.

THE COURT: All we have thus far is matching Mr. Rodriguez' testimony in the State trial with that testimony here, and trying to show a variation.

MR. MAHLER: I am trying to show -- your Honor, I am trying to impeach the credibility of Mr. Fiffe, and to show you that had I had that information, I would have been a far more effective cross examiner of Mr. Fiffe, the Government's star witness, than I was in a position to be at the time.

THE COURT: You haven't touched on that so far.

Q Do you recall testifying in the State court that on November 15th --

THE COURT: All right, we will suspend this and I will continue it at about 3 o'clock.

(Luncheon recess taken.)



(4:00 o'clock p.m.)

THE CLERK: United States of America versus  
Israel Diaz-Martinez.

S A U L R O D R I G U E Z , having been previously  
duly sworn, testified further as follows:

THE COURT: Would you have any objection to  
submitting to me -- the entire file to me in camera?  
I will not turn over any part of the file without  
consulting the U.S. Attorney.

THE WITNESS: No problem. There are -- they  
are active investigations with people that haven't  
gone to trial. And he is the defense attorney.

MR. MAHLER: I am in the other case.

THE COURT: Yes.

Suppose you turn the whole file over and  
mark it for identification.

THE CLERK: So marked as Government's --

THE COURT: I will examine it in camera.  
Government --

THE CLERK: Government exhibit 1.

THE COURT: I will try to look at some of the  
pages while the examination is going on. And I will  
ask you, if you have any objection as to those that  
I deem he should have --

THE WITNESS: No, sir.

THE COURT: Suppose you put it in an envelope.

THE CLERK: All right.

THE COURT: And I will put the exhibit in the envelope.

MR. KIMMELMAN: Again, we have no objection to producing the November 15th DD5's at this time for examination.

THE COURT: November 15th, 1973, this case.

MR. KIMMELMAN: I'm sorry, '73.

THE COURT: So this is -- this can be marked, right?

THE WITNESS: Can I see it, your Honor?

Right.

THE COURT: Let it be marked for identification.

THE CLERK: So marked for identification, Government exhibit 1A for identification.

THE WITNESS: I will be getting those papers back at the end of the --

THE COURT: I may take it home over the weekend to look at it. Is that all right?

THE WITNESS: Fine.

THE COURT: Because I won't have the time to



look at this.

THE WITNESS: Fine.

THE COURT: And will you see that Mr. Rodriguez gets it as soon as I return it to you?

MR. KIMMELMAN: Yes, your HOnor, I will.

THE COURT: And then once it's marked, I would direct that it be available to the Court of Appeals for possible review.

THE WITNESS: Yes, sir.

THE COURT: All right.

And, of course, if you want to, you can just Xerox it and turn that part over to the Court of Appeals.

THE WITNESS: Fine. Thank you. That's probably better.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. MAHLER: (continued)

Q Could you give us approximately for the record how many reports you have handed over to the Court?

A It's about --

Q Would you know?

A It's about a one-inch buy operation folder.



Q Now, these are your reports?

A No, sir.

Q These are everyone's'?

A They contain my reports, the reports I made out and by members of the backup team.

Q So that the Judge now has the reports of everyone that was involved in operation 560?

A Everyone that made observations. Everyone that was there making observations during buys and surveillance that was done in that investigation.

Q Now, I am holding something that is marked Government exhibit 1A. And would you look at this, please?

A Yes.

Q Is that your report from November 15th, 1974?

A This is my report as to a buy that occurred on that date, yes, sir.

Q Is this a daily activity report?

A No, sir.

Q What do you call this?

A OCCB buy reports.

Q The DD5's are also from this day?

A No, sir. I wouldn't make out a DD5. That would -- the system has changed within OCCB. At one time

1  
2 I would make out an OCCB buy report. Then they called it  
3 Miscellaneous 834. Then it was called DD5. That's about  
4 the same thing, and OCCB buy report in that case.

5 Q This is the extent of the report that covers  
6 November 15th.

7 A I also made out an activity report for  
8 November 15th.

9 Q Relating to this investigation?

10 THE COURT: Now --

11 THE WITNESS: Yes, sir.

12 THE COURT: (continuing) -- show this to Mr.  
13 Kimmelman. Is this a report that was turned over  
14 to the defendant in the last trial?

15 Show it to the witness if there is any  
16 question about it.

17 MR. KIMMELMAN: I don't believe it was. No,  
18 it was not, your Honor. I believe, for the record,  
19 the only report that was turned over, which was marked  
20 as Government exhibit 3500, 22 and 22a, was the  
21 report such as you have in your hand for January  
22 17, 1974.

23 THE COURT: All right.

24 Q This is the entire -- do I have it here now?

25 A What do you want?



Q In other words --

A What are you looking for? You want to know what form I make out after I make a buy?

Q On this particular day, you went to 293 Grand Street, correct?

A That is correct.

Q All right.

You took part in a buy; is that right? On that particular day?

A That's November 15th. That report.

Q Right?

A Yes.

Q I would like to know what reports you filled out for November 15th concerning this operation 560. Or if that is too broad, concerning 293 Grand Street, concerning the activities of Blanco and Fiffe and Juanita Guzman, if she's involved.

A That's the buy report for the sale that occurred on November 15th. And I made out a daily activity report.

Q Where is the daily activity report?

A It's on the Judge's desk.

MR. MAHLER: Is it possible for me to see that? Do you have any objection to my seeing the activity



report?

MR. KIMMELMAN: No, we have no objection.

THE COURT: What's that?

THE WITNESS: I would like to look at it.

MR. KIMMELMAN: There is another report  
contained in what you have for the 15th which the  
witness calls an active -- daily active log or  
report.

THE COURT: One of these?

MR. KIMMELMAN: I believe so.

THE WITNESS: Yes, sir.

THE COURT: You have no objection to it?

MR. KIMMELMAN: He would like to see it.

MR. MAHLER: He would like to see it first.

THE COURT: What day is it?

MR. KIMMELMAN: November 15th.

THE COURT: November 15th. I have to give it  
to you and you will have to find it.

THE WITNESS: Okay. Fine. No problem.

MR. KIMMELMAN: No objection to having this  
marked as well.

THE COURT: Let it be marked.

THE CLERK: Government exhibit 1B for  
identification in the hearing.

1  
2 Q While we are doing this, officer, --  
3 withdraw that.

4 Now, it's your allegation -- and correct me  
5 if I am wrong -- that on November 14th you went to 293  
6 Grand Street -- I am sorry. It says the date of activity,  
7 November 15th?

8 A That's correct.

9 Q It is your testimony that on that particular  
10 day you went to the clothing store at 293 Grand Street,  
11 went down the trap door into the basement, and you conducted  
12 a transaction for cocaine with a gentleman you know now as  
13 Manuel Fiffe; is that correct?

14 A On November 15th I bought approximately a  
15 quarter kilo of cocaine from Manuel Fiffe and Victor Blanco  
16 at 293 Grand Street in the basement.

17 (continued next page.)  
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19  
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Rodriguez-direct

BY MR. MAHLER:

Q Right. Now, is there anything on your reports anywhere that mentions you either observing or meeting in any way Mr. Diaz-Martinez?

A No, sir. I didn't write it down on my report. No, sir.

Q You have no description of him as John Doe in any way?

A No. On that day he didn't take part in that sale.

Q I see. Now, from -- now, you filed DD-5s or -- I am sorry. Activity reports, whatever you would like to call them, from November 15th through January 17th; isn't that right?

A Yes, sir, I did.

Q Okay. In any of those reports, is there any mention of your meeting or becoming aware of a man named Diaz-Martinez? Yes or no. Is there or is there not?

A If I were to write down on a daily activity report each and every person I met --

Q Will you please answer my question. Is there a mention -- Mr. Kimmelman can ask you that question.

A On January 17th, I had a drug-related conversation with Israel Diaz-Martinez. On that date I



Rodriguez-direct

made out a DD-5 pertaining to that conversation.

Q Officer, between November 15, 1973 and January 17, 1974, do any of your reports that you filed in that period in any way mention or allude to you meeting or becoming aware of a man named Israel Diaz-Martinez?

A No sir, they do not.

Q Now, on your report marked Government Exhibit 1A, you say that you recorded a conversation on the NAGRA, which is a tape recorder; is that correct?

A That's right.

Q Is there any conversation relating to Mr. Diaz-Martinez?

A Might be an hello, hello, how are you. That is the extent of my conversation. That's how I testified before.

Q Where he would be identified if we played the tape?

A I didn't say that. I didn't say that.

Q That's what I am asking you.

A Where he would be identified? I would say, hello. Just like I testified. That's greeting him. Hello, how are you. Maybe to that extent. That's it.

Q This is just a guess on your part?

A A guess. I have testified as to that.

Rodriguez-direct

THE COURT: Is that your best recollection?

THE WITNESS: That's correct, your Honor.

Q So if we played the NAGRA for November 15th, there would be a time when we would hear you say, hello, to somebody who you would identify as Diaz-Martinez?

A How can I identify one as Diaz-Martinez if he doesn't speak back?

Q Someone you --

A We have a transcript of that NAGRA, a written transcript.

Q And the transcript indicates that you said hello to somebody that --

A That's correct.

Q (continuing) -- that didn't say hello?

A That's correct.

Q That is what it will testify to?

A Yes. That's the transcript that was used at the trial of Manuel Fiffe and Victor Blanco.

Q Does the Judge also have a copy of the transcript?

A It's not in the file.

THE COURT: Is this it?

THE WITNESS: This is it.

THE COURT: Was this transcript used in the



Rodriguez-direct

trial in the State Court?

THE WITNESS: I don't know if this is the exact transcript. But there are transcripts of the tape. I believe this is the one that was used. Some deletions or non-pertinent conversation that didn't pertain to the two defendants was not used at that trial. So I don't know if this is the exact transcript. But this is a transcript of the conversation.

THE COURT: Have you seen that transcript?

MR. MAHLER: No, I haven't.

THE COURT: Do you have any objection to turning that over?

MR. MAHLER: They are about to.

THE WITNESS: I know there is an appeal in the State Court.

MR. MAHLER: They are about to give me the transcript. But I don't know if it's the same one.

THE WITNESS: No. You would get another transcript.

MR. MAHLER: It's pertaining to another case.

THE COURT: Would that in any way interfere with the prosecution in the State Court?

THE WITNESS: I know that there was a conviction on that case and there is an appeal.

Rodriguez-direct

THE COURT: But if there is a conviction, anything you had --

THE WITNESS: I don't know.

THE COURT: -- (continuing) -- is disclosed already.

THE WITNESS: That's correct.

THE COURT: It's in the record. What difference does it make?

THE WITNESS: As far as I am concerned, he can look at it if --

MR. KIMMELMAN: I don't particularly see the--

THE WITNESS: I don't know.

MR. MAHLER: I will ask him.

BY MR. MAHLER:

Q Is there anything that you have in there that you can show us that pertains to you saying hello to anybody?

A Yes. I will show you the conversation as I am entering the store.

Q All right.

A I can even read it from the transcript.

Okay. As I'm entering the store, how are you doing.

Manuel Fiffe answers, okay.

Excuse me. And then I go on to ask, how are



Rodriguez-direct

you. And then there is a pause. Then there is another conversation. And then I ask, what incense do you burn here. What incense is this? You don't know.

Q But you're not alleging that there is any conversation on the tape of the voice of Diaz-Martinez, are you?

THE COURT: He said that.

THE WITNESS: I said that.

THE COURT: He said that there is no voice of Diaz-Martinez on the tape.

MR. MAHLER: All right.

Q Now, did you make a NAGRA tape of the incident of January 17th?

A No, sir, I did not.

Q But there is tape recordings of almost all the other transactions?

A I never said that. There are tape recordings of some transactions. There are tape recordings of some telephone conversations.

Q And you use the code term November 15th, JD Red, correct?

A That's correct. Yes.

Q And you -- is it your testimony that is not something that you developed with the State officials or

Rodriguez-direct

with the Federal agents, correct?

A That's correct.

Q Did you later become aware that they used the same --

A That was his nickname. I mean, if the guy is called Red, that's his nickname. That's what you call him, Red. Everybody called him Red. That's the man's nickname. It's a confidential investigation. You're not going to put his name all over your papers.

THE COURT: What does JD mean?

THE WITNESS: John Doe.

THE COURT: John Doe?

THE WITNESS: That's correct.

THE COURT: Because I see you have other JDs here.

THE WITNESS: All buys go down as John Doe so-and-so.

BY MR. MAHLER:

Q On that particular date, November 15th, it is your testimony that he said he couldn't lower the price because it was good cocaine?

MR. KIMMELMAN: I am going to object to this. It has nothing to do with this -- the issues raised in the defendant's motion.



Rodriguez-direct

1  
2 THE COURT: I thought you claimed that you  
3 were denied certain reports that you could have used  
4 on cross-examination?

5 MR. MAHLER: Well, I am trying to -- I am  
6 trying to demonstrate also that had I had this type  
7 of testimony and these reports, I could have shown  
8 that Fiffe was either --

9 THE COURT: You must be more specific. This  
10 testimony, this particular report. And then at an  
11 appropriate time I will ask you how you could have  
12 used it. But you first develop the first reports  
13 that were denied to you.

14 MR. MAHLER: Well --

15 THE COURT: You are not going to use this  
16 hearing in order to try to have the witness say  
17 something different than he said at the trial and  
18 then go before the Court of Appeals and say, "Well,  
19 he lied."

20 That's not the purpose of this hearing.

21 MR. MAHLER: May I try to briefly explain to  
22 you what I am --

23 THE COURT: No. I just want you to try to  
24 prove that some matters that were withheld from you,  
25 you could have used in your cross-examination.

Rodriguez-direct

First, in this hearing, you try to prove that there were matters withheld from you that you could have used.

MR. MAHLER: Well, I am trying to show that these matters would have been used to cross-examine Mr. Fiffe, not necessarily this witness. That's just--

THE COURT: Or Mr. Fiffe. I haven't seen anything yet, Mr. Mahler.

BY MR. MAHLER:

Q My question to you is, on November 15th, was it your testimony in the State Court, and did you put in the report, that Fiffe said to you that he couldn't lower the price because it was good cocaine, but the next time he would give you a break?

MR. KIMMELMAN: Your Honor, I am going to again object. There is no testimony at the Federal trial involving any transaction on November 15th, 1973. Now he is talking about the -- what the State investigation --

THE COURT: Objection sustained.

Q Do you have in your possession a card that Mr. Blanco gave you in front of Mr. Fiffe? A card from the store in which Blanco writes his phone number and Fiffe's name on the card? Do you have that?



Rodriguez-direct

A No, sir, I do not have it with me.

Q Do you recall this was a business card from the store? Was it not?

A I recall receiving a business card from the store. Yes, sir.

Q Now, when did you become aware -- I will withdraw that.

THE COURT: I have looked through this file, incidentally. I see nothing at all that should be turned over to the defendant.

I am going to return this file to you, Mr. Rodriguez. I've got it marked Exhibit 1. And it's in your possession. And if the Court of Appeals wants to have a look at it, then I direct that you make it available to them.

THE WITNESS: Yes, sir. I will file it with the Brooklyn South office where all these buy operation folders are filed.

THE COURT: Yes.

BY MR. MAHLER:

Q Your reports -- your reports do indicate, do they not, that on October 26th, that you went with Mr. Fiffe or Blanco to the area of Gates and Knickerbocker Avenue, do they not?

Rodriguez-direct

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A That's correct.

Q And right after that you engaged in a transaction for the purchase of cocaine; isn't that right?

A That's correct.

Q And your report indicates that the people you went with were Fiffe and Blanco, correct?

A That's correct.

Q No one else; is that right?

A I'd have to look at the reports and I can tell you if there was anyone else there.

Q Well, you can assure us, can you not, that the reports would not mention Mr. Diaz-Martinez being either a party of that transaction or present on that day; isn't that right?

A Present where? At the time the transaction took place?

Q Yes.

A He was not present. No, sir.

Q Or at any time during that day of October 26th?

A He took no part in that transaction. No, sir.

Q That was entirely a deal with Mr. Fiffe and Mr. Blanco?

A My deal was with Victor Blanco and Manuel Fiffe.

Q I believe you testified -- would you correct me



Rodriguez-direct

if I am wrong -- and it appears in your reports, that on October 26th you went to the store at Grand Street, correct?

A Yes.

Q And your store -- and on that particular day -- correct me if I am wrong -- there is no mention or no allegation by you that Mr. Diaz-Martinez was in the store?

MR. KIMMELMAN: Your Honor --

Q Is that right?

MR. KIMMELMAN: I am going to object.

THE COURT: May I have the question?

(Record read.)

THE COURT: No allegation in any report you mean?

MR. MAHLER: Yes.

MR. KIMMELMAN: That's been asked and answered. He said the name does not appear in any other report other than --

THE COURT: All right.

MR. KIMMELMAN: -- (continuing) -- November 17.

THE COURT: All right, once more.

THE WITNESS: That's correct.

Q Your report indicates that the only one in the store, I believe, was Juanita Guzman; isn't that correct?

MR. KIMMELMAN: Your Honor, again --

Rodriguez-direct

Q And Blanco?

MR. KIMMELMAN: Again, this is irrelevant to this inquiry here.

THE COURT: The report mentions -- you mean no one else but Guzman?

MR. MAHLER: No. They assert the only one in the store aside from Fiffe and Blanco when you -- when you -- who you went into the store with was Juanita Guzman.

THE WITNESS: I could look at my report and tell you. I know Juanita Guzman is your client in a case pending in the State Court. So --

THE COURT: When is that trial coming --

THE WITNESS: It's the early part of June, your Honor.

THE COURT: This hearing isn't conducted as a pre-trial to the Guzman case.

MR. MAHLER: No, it is not.

THE COURT: Has the --

MR. MAHLER: I am trying to conduct this hearing and trying to elicit testimony in line with United States against Rosner. And I think that that is what I am trying to develop.

THE COURT: In line with United States



Rodriguez-direct

against Rosner?

MR. MAHLER: That's correct.

THE COURT: What does that hold?

MR. MAHLER: I am trying to show that the material -- that if I had the material of this detective, I could have successfully cross-examined Mr. Fiffe, who was trying to show that my client was his boss and that everything he did, he did for my client.

THE COURT: All right. Then tell me the purpose of this question. The question was --

MR. MAHLER: I have asked --

THE COURT: Whether in your reports --

MR. MAHLER: On October --

THE COURT: Whether in your reports you ever disclosed that anyone else was in the store except Guzman -- right?

Is that right?

MR. MAHLER: That's correct.

THE COURT: All right. How is that going to help you show that had you had this letter -- assuming it's true -- had you had this in your possession at the time of cross-examination it would have been helpful?

Rodriguez-direct

MR. MAHLER: Throughout the case, Mr. Fiffe -- there is not one bit of evidence on the Government's direct case --

THE COURT: Yes. You have all that in your affidavit. Don't repeat it. It doesn't have any more force because you say it twice.

MR. MAHLER: That's the contention I am making.

THE COURT: All right. Go ahead, Mr. Mahler. Try to bring this to a quick close.

MR. MAHLER: I would like to recall to your Honor that when I wanted an adjournment to cross-examine --

THE COURT: I know all about that.

MR. MAHLER: -- (continuing) -- this detective--

THE COURT: You have showed nothing. The affidavit says nothing. It's just general terms. You have been accusing everyone in the trial with withholding information. You haven't yet pinpointed a bit of information that was withheld from you that you say -- that was not disclosed. All you are trying to show is that in another trial a witness said something different. This witness. And you're trying to show that his testimony was incredible on that basis. That's what you are trying to show. You asked for



Rodriguez-direct

many things during the trial. You asked for many things that could never be delivered. These are scatter-shot approaches. Ask for everything.

MR. MAHLER: Your Honor has an entire sheaf of reports that weren't turned over to me sitting on your desk.

THE COURT: And not one of them --

MR. MAHLER: That's your Honor's opinion.

THE COURT: They don't even relate to it. You think because your client is charged with an offense that you are entitled to the entire records of all of the law enforcement agencies in the City.

MR. MAHLER: No, your Honor. I think that the Government and the State can't just ignore each other when they are working on the same case and claiming they don't have Brady and --

THE COURT: Do you want to testify and tell me how the Government, the United States Attorney, knew all about the narcotics investigation? I will ask Mr. Rodriguez to step down. You know all about it. You were a District Attorney at one time.

MR. MAHLER: We will call Agent Abbot, if your Honor please, that the Government and State were watching one store during the same two weeks.

Rodriguez-direct

1  
2 THE COURT: Now, you have made many baseless  
3 claims. It happened during the trial and it's  
4 happening here. That's your style. Maybe it works  
5 in places, but not here. You have to have proof here.  
6 It's just a waste of time to listen to you. I want  
7 to listen to witnesses that have evidence.

8 You're trying to tell me that because it was  
9 a joint task force, that our Government knows  
10 everything that goes on with the City and State.  
11 Well, I know differently. It doesn't happen that way.

12 MR. MAHLER: This witness testified that from  
13 January, 1974 they knew about it.

14 THE COURT: I heard the testimony. They had  
15 informal conferences. He did not turn the file over  
16 to the Government. And your smile and disbelief means  
17 nothing at all.

18 MR. MAHLER: I would like to know what the  
19 informal conferences --

20 THE COURT: You don't know what you are talking  
21 about, Mr. Mahler.

22 MR. MAHLER: All right. That's my opinion.

23 BY MR. MAHLER:

24 Q Officer, do you have the card that Mr. Blanco  
25 gave you? Mr. Diaz' business card. Would that be available?



Rodriguez-direct

MR. KIMMELMAN: Your Honor, I am going to again object on relevancy grounds.

THE COURT: What has that got to do with your inquiry?

MR. MAHLER: I am trying to show that Fiffe and Blanco gave out Mr. Fiaz-Martinez' card at all times when he wasn't even present and for all intents and purposes was not involved at all.

THE COURT: I will allow it.

Did he ever -- did Blanco give you Diaz' business card?

THE WITNESS: I received a business card from them. Yes, I did.

THE COURT: One?

THE WITNESS: Yes, sir.

THE COURT: All right. Do you have it?

THE WITNESS: It's not here, your Honor. It was used in evidence in the State Court. The District Attorney might be holding it.

BY MR. MAHLER:

Q Was there an officer Falco on this case, too?

A Yes, sir.

Q Is his reports -- is his report turned over to Judge Mishler, too?

Rodriguez-direct

A Yes, sir.

MR. MAHLER: I have no further questions.

THE COURT: Do you have any questions,

Mr. Kimmelman?

MR. KIMMELMAN: Just a few questions, your

Honor.

CROSS-EXAMINATION

BY MR. KIMMELMAN:

Q Mr. Rodriguez, when you testified in Federal Court here on October 23rd, 1974, you turned over a DD-5 relating to the incident that happened on January 17th, 1974; is that right?

A Yes, sir. That's correct.

THE COURT: That was marked what exhibit in the trial?

MR. KIMMELMAN: Marked Government Exhibit 3500-22 and Government Exhibit 3500-23A.

Q I show you these exhibits. Those are your only reports for January 17th, 1973 -- '74?

A Yes, sir.

Q Is this the only thing that you turned over to the U.S. Attorney's office when I asked you, have you had any material on any prior investigation about Diaz?

A That's the only material I turned over. Yes.



## Rodriguez-cross

1  
2 Q Now, when you took the stand and you were  
3 cross-examined by Mr. Mahler, Mr. Mahler asked you if you  
4 had any DD-5s; is that right?

5 A That's correct.

6 Q And Mr. Mahler asked you if it's your testimony  
7 that this is the only DD-5 that was filed in connection with  
8 the entire investigation. And you answered, the entire  
9 investigation -- he asked you concerning Israel Diaz. And  
10 you answered, "Yes, I believe it is."

11 Do you remember those questions and making  
12 those answers?

13 A That's correct. Yes.

14 Q Is that a true statement?

15 A I filed one DD-5. And there was a  
16 Sergeant Monahan who filed another DD-5 concerning  
17 Israel Diaz-Martinez.

18 Q And later on Mr. Mahler asked you if you had  
19 any notes of what happened on November 15th, 1973; is that  
20 right?

21 A Yes, sir.

22 Q And you replied that you had made no notes; is  
23 that correct?

24 A Yes.

25 Q And the exhibits that were put into evidence

Rodriguez-cross

1 today, Government Exhibits 1A and 1B, show there is no  
2 mention of Israel Diaz-Martinez; is that right?  
3

4 A That's correct.

5 Q So your testimony was correct?

6 A That's correct. Yes, sir.

7 Q And you presented to the Court the entire file  
8 of that operation?

9 A Yes.

10 Q State buy operation marked as Government  
11 Exhibit 1; is that correct?

12 A Yes, sir.

13 Q Have you ever turned that over to the United  
14 States Government prior to your bringing it into court today?

15 A No, sir, I have not.

16 THE COURT: That includes any agent, any  
17 drug enforcement agent.

18 THE WITNESS: No, sir, we did not. I did not.

19 Q You did not?

20 A That's correct.

21 Q And the only thing that you had turned over  
22 to the United States Government, including any agent, was  
23 the -- what has been marked as Government Exhibit 3500-22  
24 and 23A?

25 A That's correct.



Rodriguez-cross

1  
2 Q And at the time the -- at the meetings that  
3 you were present with -- between January and June of 1975,  
4 did you personally or did you observe any State or local  
5 police officer turn any material over to a Federal officer?

6 A No. It was an exchange of information.  
7 Verbal exchange. Informal, verbal exchange of information.

8 Q Now, sir, could you explain to us very briefly  
9 how it came about that the Federal Government and the State  
10 Government happened to be both making buys out of  
11 293 Grand Street in the fall of 1973?

12 A There was a registered New York City  
13 confidential informant who was giving us information  
14 pertaining to that area and the subjects in buy operation  
15 number 560. The same informant went over to the Federal  
16 authorities and he began giving them the same information.

17 Q Did you know that the confidential informant  
18 that was working for your agency was also giving the same  
19 information to the Federal Government at the same time?

20 A Originally we didn't know that the informant  
21 was giving the same information to the Federal authorities.  
22 But through a computerized system, intelligence system, we  
23 found out that the Federal Authorities had an investigation  
24 in that area on the same subjects.

25 Q This was after you had made the buys in

Rodriguez-cross

October and November of 1973?

A It was after I had made the buy in October. And after that it was that I -- it was then that I learned that the Federal Government had an investigation in that area.

MR.KIMMELMAN: I have no further questions.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. MAHLER:

Q But you knew it by January, '74, correct?

A It was January or a little later. Sometime after the operation -- our operation began, there was, through the computer system, the connection system, we found out that the -- that the Federal Drug Enforcement Administration was conducting an investigation in that area on those subjects.

Q And that was -- you discussed that, did you not, when you had these conferences with the Federal Government officials, didn't you?

A We discussed it. We discussed how it came about. And it was then learned that the -- we were using the same informant without the agencies knowing about it.

Q You testified already that the conference began in January or thereabouts? Even perhaps in December, '73, am I correct?



## Rodriguez-redirect

1  
2 A I said some time in the winter, after the  
3 beginning of that investigation -- after the beginning of  
4 our investigation. We found out in the wintertime.

5 Q Are there any notes of those conferences?

6 A I said that there were informal, verbal  
7 conferences that took place at our office.

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13 (continued on next page)  
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Rodriguez-redirect

Q And are there any notes? Are there any DD-5s or daily activity sheets to show that your conference with the Government officials --

A I just told you for the third time they were informal exchanges of information. If you were to write down everything you do during your day on an activity report, you would have activity reports ten, 15 pages long. They were informal.

Q Who were the Government agents that took part in this group?

A I remember meeting a Government agent Barry Abbott and one of his superiors. I don't recall his name. But they were informal. There was no taking of names, no writing of reports, no writing of minutes of the meeting. It was an informal exchange of information.

MR. MAHLER: I have no further questions.

THE COURT: Anything further?

MR. KIMMELMAN: No, nothing.

THE COURT: All right, you may step down.

THE WITNESS: Thank you.

MR. KIMMELMAN: I would ask that the submission of evidence of the reports of November 15, 1973 --

THE COURT: Well, they are marked. You can mark them in evidence.



2 1 Call the next witness. Who is it?

2 MR. MAHLER: Yes, I would like to call Barry  
3 Abbott. I just have a few questions.

4 THE CLERK: Is that in evidence?

5 MR. KIMMELMAN: The Judge said that.

6 THE CLERK: Shall I mark them -- mark it in  
7 Evidence?

8 THE COURT: Yes.

9 THE CLERK: Government Exhibits 1-A and 1-B  
10 previously marked for Identification now marked in  
11 Evidence in the hearing.

12 B A R R Y P A U L A B B O T T , called as a witness,  
13 being duly sworn by the Clerk of the Court, testified  
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. MAHLER:

17 Q Agent Abbott, could you tell us on approximately  
18 what date the Federal investigation as to activities centered  
19 around 293 Grand Street?

20 A October 31, 1973.

21 Q You would say that was the very first time?

22 A Yes. That is the day I was introduced to  
23 Victor Blanco. That's when the case began.

24 Q No one on your team at all had anything to do  
25 with the case prior to that?

Abbott-direct

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A No, sir.

Q Was Agent Dovetko in your team?

A Yes, sir. I was working for Agent Dovetko on this case.

Q I ask you to look at this. I ask you if you can identify -- well, would you just look at it, please? Does that refresh your recollection any as to when this case began?

A No, sir. My first awareness was on October 31, as I testified. I was not aware of Agent Dovetko's prior knowledge.

Q Would you agree now that Agent Dovetko began an investigation at 293 Grand Street prior to October 31st?

MR. KIMMELMAN: Objection.

THE COURT: I will allow him to answer.

THE WITNESS: Yes, sir.

Q Will you agree with me that he began his investigation as early as October 29th?

A Yes, sir.

Q Did you subsequently become aware that the State claims to have initiated an investigation of 293 Grand Street on or about October 25, 1973?

A Are you asking me when I became aware of it?

Q Yes. Did you become aware of that?



Abbott-direct

A Yes, sir, I did.

Q Now, your investigation --

THE COURT: Wait now. When?

The question was, when, right?

MR. MAHLER: Yes.

THE WITNESS: When would be -- sometime in  
December of 1973.

Q Now, would you agree with me that between  
October 31st and November 20th of 1973, you had -- you had  
the premises 293 Grand Street under surveillance?

A That's correct.

Q Did there come a time when you learned that the  
State Agents were making observations of the same premises  
during that period of October 26th to November 20th? Did you  
learn that?

A Yes, sir.

Q When did you learn that?

A Same time. Sometime in the early part of  
December, 1973.

Q In the early part of December. Did you make  
any attempts to get together with them at that time to combine  
your case?

A Personally?

Q Well, did you know of any attempts?

Abbott-direct

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A Yes, sir, there was.

Q What attempt was made?

A To my knowledge, Agent Dovetko and his superior met with representatives of the Brooklyn South Narcotics and had a discussion as to the investigation that was being conducted by both our agencies.

Q This is early December 1973, correct?

A To the best of my recollection, yes.

Q Do you know where they met?

A I believe they met at headquarters for Brooklyn South Narcotics.

Q Agent Dovetko, was he the supervisor of the operation?

A He was the case agent at that time, yes.

Q He was effectively the boss of that operation; is that correct?

A That's correct.

Q What was the other name that you mentioned?

A Seneca.

Q Seneca. Seneca was also a supervisor?

A He was Agent Dovetko's supervisor.

Q He was above Dovetko?

A That's correct.

Q What rank was he?



Abbott-direct

A Group Supervisor.

Q Now, do you know who they met with?

A I believe they met with Lieutenant Garry and a Sergeant -- but I'm not sure who the Sergeant was -- from Brooklyn South.

Q Do you know who that Lieutenant is? What his connection is?

A He would be the Lieutenant in charge of the Brooklyn South Narcotics.

Q He would be the Lieutenant in charge of the whole Brooklyn South Narcotics operation?

A I am not familiar with the hierarchy so I couldn't state for sure.

Q Now, do you know what they decided to do at that meeting?

MR. KIMMELMAN: Your Honor, I am going to object.

THE COURT: Objection sustained.

Q Did there come a time when you had conversations with people and learned what the outcome of those meetings were?

A Shall I answer that?

THE COURT: You didn't object.

MR. KIMMELMAN: No. I am waiting to object to the next question.

Abbott-direct

THE WITNESS: Could you repeat the question, please?

Q Did there come a time when you had conversations with anyone?

A Yes.

Q And learned what the outcome of those meetings were?

A Yes, I did.

Q Who did you meet with? Who did you learn it from?

A Agent Dovetko.

Q Was this still in early December, '73?

A That's right.

THE COURT: Did you say early December or did you say December?

THE WITNESS: Early December, '73.

THE COURT: All right.

Q What did he tell you? What did he tell you was the mode of operation with the Federal Government?

MR. KIMMELMAN: Objection.

THE COURT: Sustained as to form.

Did he tell you that he was -- that the Federal Agents and the City Agents or State Agents were working together on the case that arose from the 293 -- what



Abbott-direct

is the --

MR. MAHLER: Grand.

THE COURT: Grand Street store?

THE WITNESS: No, sir.

Q Did you say, "No"?

A That's correct. We were not working together.

Q Didn't he advise you at that time that he had meetings with the -- with the State people?

A Yes, he did have meetings with the State people.

Q And this was in regard to the fact that you were both observing the same premises --

A That's correct.

Q (Continuing) -- was it not?

My question to you is, did he give you any instructions as to how you were to proceed from then -- from then on?

A Yes, he did.

Q Now, did these instructions inform you of what your relations would be with the federal agents?

A I -- do you mean --

Q The State.

A Yes, he did.

Q What did he say to you?

A We were to pursue certain defendants in our

Abbott-direct

1 investigation and the police were to pursue other defendants.

2 Q In other words, you split up the group; isn't  
3 that correct?  
4

5 A Excuse me?

6 Q You split up the group under investigation,  
7 correct?

8 A No, sir, that wouldn't be correct.

9 Q Who were you supposed to pursue?

10 A Bermudez and Vivas.

11 Q And who were the State people supposed to pursue?

12 A Diaz.

13 Q And you learned that in early December, correct?

14 A That's correct.

15 THE COURT: How did you know the State was  
16 supposed to pursue Diaz? Who told you that?

17 THE WITNESS: Dovetko.

18 THE COURT: Oh.

19 Q Did you ever meet Saul Rodriguez?

20 A Yes, I did.

21 Q Did you meet him about that time?

22 A No.

23 Q When did you first meet him?

24 A I am not sure. It was in the springtime.

25 Q Now, were you to continue to work side by side



Abbott-direct

with the State agents?

MR. KIMMELMAN: Objection.

THE COURT: Objection sustained. Nobody knows what that means and you are not going to interpret it, Mr. Mahler.

Q Well, did you plan exactly how you were going to go about developing this investigation in view of the fact that you now knew that the State agents were involved?

A There was no plan. I was just told not to pursue Diaz' end of the investigation.

Q And were you informed that there would be meetings, future meetings between yourself and the State agents?

A No future meetings were planned.

Q Was there any discussion as to what would happen if your investigation would overlap?

A We were supposed to advise one another of anything that might interfere in the other investigation.

Q Ultimately, you arrested Diaz Martinez; isn't that correct? Or your team did?

A That's correct.

Q Is that right?

A Yes.

Q Was there a change in the plan at some time?

Abbott-direct

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A I can't answer yes or no to that question.

3

Q Well, was Agent Dovetko's instructions -- did

4

he instruct you that the State officials were supposed to

5

take care of Diaz Martinez?

6

A That's correct. They were supposed to pursue

7

the investigation.

8

Q But you wound up pursuing it; is that right?

9

A No, it is not right.

10

Q You wound up arresting him; isn't that correct?

11

A That's correct.

12

Q Now, is it your testimony that you were only

13

supposed to deal with Fiffe and Blanco?

14

A I didn't say that.

15

Q Where -- who was assigned to you?

16

A Bermudez and Vivas.

17

Q Bermudez and Vivas. I see.

18

Now, the Estrella Record Shop is the record shop that

19

is near Gates and Knickerbocker; isn't that correct?

20

A That's correct.

21

Q And --

22

THE COURT: What has all this got to do with

23

your motion?

24

MR. MAHLER: Because --

25

THE COURT: I am trying to find some connection.



MR. MAHLER: All right. What it has to do with my motion -- I am trying to show that on October 26th, that Fiffe and Blanco independent of Mr. Diaz Martinez conducted a sale of cocaine from the Estrella Record Shop that had to do -- that Vivas and Bermudez had nothing to do with.

THE COURT: It has nothing to do with this application. You are trying to show that the Government somehow withheld statements or reports from you that you could have used in cross-examination.

MR. MAHLER: That's correct. If I could have had those reports, I could have disproved Mr. Fiffe.

THE COURT: You haven't proved there was a report, Mr. Mahler. Just the point --

MR. MAHLER: These are all in their reports.

THE COURT: Where?

MR. MAHLER: There are reports of the sale at Knickerbocker Avenue and -- Knickerbocker and Gates. They may not refer to the Estrella Record Shop completely or specifically.

THE COURT: All right, go ahead, Mr. Mahler. As long as they are in the same world, right?

MR. MAHLER: If I may, your Honor, I just want to point out to you that there was no direct testimony

Abbott-direct

on the trial by any agent, except for the testimony of Piffe and Blanco --

THE COURT: I want to point out to you that you haven't developed a single bit of information that wasn't turned over to you that could have been of use to you. And that's the purpose of this hearing.

Q Did there come a time when you became aware that a sale had taken place on October 26th involving State agents in the vicinity of Knickerbocker and Gates Avenue?

A Yes.

Q When did you become aware of that?

A Today.

Q Just today for the first time?

A That's correct.

Q Would you know, of your own knowledge, whether there are any reports -- whether there were any reports filed by Agent Dovetko or Agent Seneca concerning the meetings with the State officials?

A There were no written reports that I know of.

MR. MAHLER: I have no further questions.

THE COURT: Any cross?

MR. KIMMELMAN: Just a few questions, your

Honor.

(Continued on next page.)



## CROSS-EXAMINATION

BY MR. KIMMELMAN:

Q Agent Abbott, did anyone from Brooklyn South or any other police agency turn over to you or anybody in your group, to your knowledge, any reports of their investigation?

A No, sir.

Q Have you ever seen any of the reports of the investigation that the State was running of Fiffe and Blanco and other people connected with 293 Grand Street?

A The only report I saw was Detective Rodriguez' report about his meeting with Mr. Diaz on January 17, 1974. And I saw that on the date that Detective Rodriguez testified about that in this trial in October.

Q Would you tell us why there were Federal, State investigations both going on in the fall of '73.

A We had an informant who introduced me to Blanco and also introduced Rodriguez to Blanco. The informant did not tell either one that he introduced the agent from another agency. So we did not become aware of this until after the fact.

Q Now, your investigation into 293 Grand Street occurred in the months of October and November; is that correct?

1

2

A That's correct.

3

Q

And after that you concentrated on Bermudez

4

and Vivas?

5

A

That's correct.

6

Q

And the reason was that you didn't want to

7

overlap with any State investigation --

8

A

That's correct.

9

Q

(Continuing) -- that was continuing at 293

10

Grand Street?

11

A

At the time of this meeting in December, it

12

appeared that the police had a better chance of making a

13

case against Mr. Diaz. So they were left to pursue that.

14

Q

Was there any time during the period of October,

15

1973, through the Spring of 1974, when this was a joint

16

task force operation?

17

A

Never was.

18

Q

Were these separate investigations at all times?

19

A

That's correct.

20

MR. KIMMELMAN: I have no further questions.

21

THE COURT: Anything further?

22

MR. MAHLER: No, I have nothing.

23

THE COURT: All right, you may step down.

24

(Witness excused.)

25

THE COURT: Anything further?



1  
2 MR. MAHLER: I have no further questions.

3 THE COURT: All right, the hearing is over.

4 Mr. Mahler, you point to one bit of information  
5 supported by the record -- not some speculation or  
6 surmise -- that you say was withheld from you.

7 MR. MAHLER: All right. Had I had the reports --

8 THE COURT: Which reports?

9 MR. MAHLER: All of these reports from the State.

10 THE COURT: You don't even know what is in the  
11 reports. The reports that I looked at in camera --

12 MR. MAHLER: In other words --

13 THE COURT: You must assume that there is nothing  
14 there.

15 MR. MAHLER: If your Honor will give me a  
16 moment. As I repeatedly said, during the trial there  
17 was no direct evidence by Agent Abbott or any other  
18 federal agent that my client Diaz --

19 THE COURT: Just accomplice testimony.

20 MR. MAHLER: -- did anything -- it was only  
21 accomplice --

22 THE COURT: Defendants are convicted in this  
23 court regularly on just accomplice testimony.

24 MR. MAHLER: Their testimony is that, true.  
25 They got caught doing everything. But what they did,

1  
2 they were doing for their boss Diaz-Martinez. Had I  
3 had access to all of these state reports, I could  
4 have shown in cross-examining this defendant and  
5 showed that he operated all by himself. There isn't  
6 one mention there of Diaz-Martinez. Not one. And I  
7 say that the Federal Government deliberately withheld  
8 these things. Just because you don't ask and you want  
9 to look the other way, that doesn't mean that you don't--

10 THE COURT: Do you say that the Federal Govern-  
11 ment had these reports in their possession at the  
12 time of trial?

13 MR. MAHLER: I don't know that. But they should  
14 have had. They had every reason to have.

15 THE COURT: Well, you knew so much about it.  
16 You're a former Assistant District Attorney. Why  
17 didn't you subpoena the reports? They weren't under  
18 the control of the United States of America.

19 MR. MAHLER: No. I didn't know about the  
20 reports at the time of the trial.

21 THE COURT: Why should Kimmelman know about  
22 them?

23 MR. MAHLER: Because Mr. Kimmelman had a duty  
24 as a United States prosecutor to ask these people  
25 those questions. And they had a duty as Government



1  
2 Agents to tell him that there was an on-going State  
3 investigation with their own reports.

4 THE COURT: Where is that? Where do you find  
5 that? Statutory or custom or what? Where do you find  
6 that duty?

7 MR. MAHLER: I think under the law and I think  
8 under the duty as a prosecutor.

9 THE COURT: Can you cite a case or a statute  
10 that they had a duty to go to the State and say, "Turn  
11 over your files"?

12 MR. MAHLER: Their agents had a duty to say to  
13 them that there are state agents also involved here  
14 and they have Jenks or Brady material or reports that  
15 they filed in connection with the same investigation.  
16 It was going at the exact same time.

17 THE COURT: It wasn't revealed at the trial  
18 that there was a state investigation going on. You  
19 didn't know that at the trial in this case.

20 MR. MAHLER: No. I knew once the trial began  
21 to unfold. Perhaps by the end of the trial. I could  
22 see that from the dates.

23 THE COURT: All right. Just a moment.

24 (Recess taken.)

25 THE COURT: Do you have anything to say,

1 Mr. Kimmelman?

2 MR. KIMMELMAN: Yes. Just --

3 MR. MAHLER: Wait. I have one other thing.

4 THE COURT: All right, go ahead.

5 MR. MAHLER: Here is a detective, Detective  
6 Rodriguez, the most devastating witness in the case.

7 THE COURT: Rodriguez was.

8 MR. MAHLER: Called in rebuttal. Absolutely.  
9 He testified --

10 THE COURT: I thought you said -- you just said  
11 without Fiffe that your man couldn't be convicted.

12 MR. MAHLER: I'm talking about the direct case.  
13 On rebuttal they called in Detective Rodriguez. And  
14 he gives about three pages of testimony. But he says  
15 he walked right up to Diaz, and he testifies that he  
16 has this conversation concerning the sale of cocaine.  
17 The first direct testimony from any State agent.  
18 And I asked him on the trial -- I asked him -- yes,  
19 I had -- I have knowledge of the State Courts --

20 THE COURT: But you do admit --

21 MR. MAHLER: I specifically asked him for his  
22 reports, as you will see in the record, and he testi-  
23 fies --

24 THE COURT: Didn't Fiffe and Blanco implicate  
25



1  
2 Diaz?

3 MR. MAHLER: Directly?

4 THE COURT: Yes. Didn't they say that they  
5 dealt for him?

6 MR. MAHLER: Yes.

7 THE COURT: Well --

8 MR. MAHLER: They said that everything they  
9 had done, they had done on his behalf.

10 DEFENDANT MARTINEZ: Yes. Excuse me. That --

11 THE COURT: Sit down, Mr. Diaz. You had your  
12 trial. That's once.

13 Go ahead.

14 MR. MAHLER: They went -- here this witness  
15 testifies -- I asked him specifically, do you have any  
16 other reports.

17 What did they think I meant? Reports from just  
18 that day of January 17th?

19 He's a seasoned detective. He knows that I  
20 am entitled to -- I meant the reports of the investi-  
21 gation, not just that one incident in Jose's Bar  
22 that he is testifying to.

23 THE COURT: You're saying he didn't turn over  
24 reports of Blanco and Fiffe? You mean -- Is that what  
25 you are saying?

1  
2 MR. MAHLER: Yes. He is testifying --

3 THE COURT: Why didn't you ask him if he had  
4 reports that implicated Fiffe and Blanco? Not that  
5 I think it would make any difference. Because they  
6 conceded they were dealing in cocaine. Would that  
7 help?

8 MR. MAHLER: His reports would have shown that  
9 in no way -- there was no mention of Diaz-Martinez.  
10 Here is a man -- both the State and the --

11 THE COURT: What does that prove?

12 MR. MAHLER: It proves --

13 THE COURT: What does that prove?

14 MR. MAHLER: I would have disproved -- as I say  
15 in my papers, the entire errand by theory --

16 THE COURT: I know what you say in your papers.  
17 I don't believe it. You think because Diaz' name was  
18 not mentioned in the report, wasn't the boss, that  
19 that was the reason he had the front man doing the  
20 errands for him.

21 MR. MAHLER: We tried to show in the trial --  
22 sure, it was his clothing store. There were times he  
23 was there and times he was out of there. But he never  
24 knew what was going on when he wasn't there.

25 THE COURT: That was your defense. The jury



1 didn't believe it. That's all

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2 How would this have helped you?

3 MR. MAHLER: I could have shown that not only  
4 did he conduct his own deals, but he testified that  
5 all the money went to Diaz-Martinez. He never conducted  
6 his own deals.

7 Here he was making deals back on October 26th  
8 with Vivas and Bermudez.

9 THE COURT: I understand your argument.

10 MR. MAHLER: This is at Estrella's Record Shop.  
11 And they were giving out the cards of this defendant's  
12 establishment. And I think under United States  
13 against Rosner and under the criteria that the Circuit  
14 Court laid down in that case, that we have proven  
15 enough to get a new trial.

16 THE COURT: Now, I'm going to ask you to make  
17 a statement only because you have been accused of  
18 having this information. And I know you brought out  
19 through Mr. Abbott and Mr. Rodriguez that you did not.  
20 But because of the charges made, I would like you to  
21 make a statement on the record.

22 MR. MAHLER: Wait. I don't want to interrupt.

23 THE COURT: Wait.

24 MR. MAHLER: I am not accusing him of having  
25 the information.

1 THE COURT: You certainly did.

2 MR. MAHLER: Wait. I am saying that he very  
3 well should have had the information.

4 THE COURT: That isn't what you said.

5 MR. MAHLER: Even if he didn't have it. I am  
6 not accusing him of any personal misconduct in the  
7 case.

8 THE COURT: You certainly did.

9 MR. MAHLER: Well, I didn't mean to make that  
10 implication.

11 THE COURT: At any rate, clear the record,  
12 Mr. Kimmelman.

13 MR. KIMMELMAN: Very good. Your Honor, for the  
14 record, at no time prior to the day that Mr. Rodriguez  
15 took the stand and testified in this case did the  
16 United States Attorney's office have in its possession  
17 or any knowledge of any state reports in their  
18 investigation into 293 Grand Street. On the day that  
19 Mr. Rodriguez testified, Mr. Rodriguez came to my  
20 office as a rebuttal witness just to testify as to  
21 the meeting he had on January 17, 1974.

22 I asked him if he had any prior statements or  
23 he had made any reports concerning that activity  
24 because that was to be the extent of his testimony on  
25 direct examination. He turned over to me the reports



1           that we marked.

2           THE COURT: I don't recall, but how did that  
3           rebuttal come out? Was it because Mr. Mahler asked  
4           whether he ever dealt in --

5           MR. KIMMELMAN: That's correct.

6           THE COURT: (Continuing) -- in cocaine?

7           MR. KIMMELMAN: That's right.

8           THE COURT: That was proper rebuttal.

9           MR. KIMMELMAN: I might just also add, your  
10          Honor, that Mr. Mahler, of course, represents Juanita  
11          Guzman. He asked Mr. Fiffe at the time he was being  
12          examined on cross-examination, have you been indicted  
13          in the State Court also, and elicited from Mr. Fiffe  
14          that, yes, he had been indicted with Mr. Blanco. And  
15          he had been indicted with Juanita Guzman. He did not  
16          pursue any details at that time as to the matters that  
17          were in the State Court indictment. He well knew that  
18          in the State Court indictment, that the State was  
19          charging Fiffe and Blanco with dealing, and the State  
20          had an investigation. And he could have pursued the  
21          matter at that time with Fiffe on the stand. He could  
22          have pursued the matter with Mr. Rodriguez on the  
23          stand as to the details of the State investigation.

24          THE COURT: And did Mr. Mahler represent  
25          Miss Guzman from the outset of that prosecution?

1 MR. KIMMELMAN: I believe he did.

2 THE COURT: Did you?

3 MR. MAHLER: That's correct.

4 THE COURT: So from the time of this trial you  
5 were representing Miss Guzman in the State Court; is  
6 that correct?

7 MR. MAHLER: That's correct. But under the  
8 State procedure there was nothing turned over up to  
9 that point to us. We have no information about that  
10 case. And I would like the record to indicate that  
11 Mr. Fiffe has an indictment all by himself. He's  
12 indicted all by himself in another case. And he's  
13 got a third case with Miss Guzman that is still going  
14 to go to trial. And he takes the position --

15 THE COURT: Didn't you know that?

16 MR. MAHLER: I didn't know that at that time.

17 THE COURT: Did you turn over the arrest sheet  
18 to Mr. Mahler at the time --

19 MR. KIMMELMAN: Yes.

20 THE COURT: (Continuing) -- of the trial?

21 Didn't it have that note on it?

22 MR. MAHLER: I don't think --

23 MR. KIMMELMAN: I don't know. It certainly had  
24 all his arrests. I don't know about the indictments.

25 THE COURT: For the record, look on your sheets.



1 MR. MAHLER: Again, in the light of the testi-  
2 mony here today, I don't think that was my obligation.  
3 I think it's their obligation.

4 THE COURT: Of course, you think that the  
5 Government must scurry around, do your investigation  
6 and turn over everything that might be of value to you  
7 right?

8 MR. MAHLER: Well, I think that when the chief--  
9 when the chief agent Dovetko and the other fellow  
10 were -- when they have conferences with the State  
11 officials and decide to work in harmony with them,  
12 I think that they have that obligation, yes. I don't.

13 THE COURT: It's interesting if it's true. Of  
14 course, if they do a bad job investigating, then you  
15 should be able to sue them for a bad job because now  
16 they are your investigators. That isn't the law.  
17 Come back in about 50 years. It may be.

18 (Recess taken.)

19 MR. KIMMELMAN: I don't see the arrest record  
20 here.

21 THE COURT: Do you have it, Mr. Mahler?

22 MR. MAHLER: I may.

23 MR. KIMMELMAN: I know, your Honor, that I  
24 turned over as Brady material all the arrest records.

25 THE COURT: All right. That will be interest-

1 ing.

2 MR. MAHLER: The arrest records won't show the  
3 individual indictments.

4 THE COURT: It shows arrests for narcotic  
5 charges, doesn't it?

6 MR. KIMMELMAN: Mr. Mahler asked Fiffe on the  
7 stand about his other indictments.

8 THE COURT: He did. He was asked.

9 MR. KIMMELMAN: Yes.

10 THE COURT: Well, there you are. You have it.

11 MR. MAHLER: You see, they just show the general  
12 arrest, but they wouldn't show that the -- the indict-  
13 ment breakdown into separate cases.

14 THE COURT: May I see it?

15 MR. MAHLER: Certainly.

16 THE COURT: Here, one Manuel Fiffe, arrested  
17 6/21/74. Criminal sale of controlled substance, two  
18 counts.

19 MR. MAHLER: That's the general arrest in the  
20 lower corner.

21 THE COURT: All right.

22 MR. MAHLER: When it goes up to the Grand Jury  
23 then.

24 THE COURT: Well, you had it.

25 MR. MAHLER: That doesn't indicate how many



1 cases he has.

2 THE COURT: I know. This is a motion for a new  
3 trial on the claim that the Government withheld  
4 evidence producible under 3500 that the defendant could  
5 have effectively used on cross-examination. The claim  
6 is that if he had this evidence, counsel for Mr. Diaz  
7 would have had a significant chance of developing the  
8 prosecution to the point where it could have induced  
9 a reasonable doubt in the mind of a jury.

10 The trouble is the defendant has failed to show  
11 that the prosecutor inadvertantly or intentionall  
12 withheld any information in any form that could have  
13 been used by the defendant for more effective cross-  
14 examination.

15 The motion for a new trial is in all respects  
16 denied and it is so ordered.

17 I will not write on this matter. I don't think  
18 it warrants a written opinion. You can take it up to  
19 the Court of Appeals in its present form.

20 MR. KIMMELMAN: Very good, your Honor.

21 Your Honor, will you -- will you tell the  
22 defendant that he has the right to appeal?

23 THE COURT: He has already appealed.

24 MR. KIMMELMAN: Yes, sir.

25 THE COURT: And his appeal includes the appeal

1 from this order.

2 MR. KIMMELMAN: Very good.

3 THE COURT: He understands that. I don't have  
4 to give him his rights under Rule 32 again. I gave  
5 it to him.

6 MR. KIMMELMAN: Very good.

7 THE COURT: This will be included in the  
8 appeal.

9 MR. KIMMELMAN: Thank you.

10 MR. MAHLER: All right. Thank you for your  
11 indulgence.

12 THE COURT: All right.

13 MR. MAHLER: Your Honor, I don't wish to both  
14 you late in the afternoon with another --

15 THE COURT: I have nothing else to do because I  
16 am waiting for a jury.

17 MR. MAHLER: The defendant would like to visit  
18 his parents in Puerto Rico.

19 THE COURT: How much is his bail?

20 MR. MAHLER: I think he has his house up.

21 DEFENDANT MARTINEZ: House and 2500 cash.

22 THE COURT: Any objection, Mr. Kimmelman?

23 MR. KIMMELMAN: To that visit to Puerto Rico?  
24 If we could set it down between certain dates so we  
25 know when he is going and when he is coming.



1 THE COURT: When is he going?

2 MR. MAHLER: Do you know when you want to go?

3 THE DEFENDANT MARTINEZ: Well, not exactly.

4 In a week or next week.

5 MR. MAHLER: Will you inform me so I can inform  
6 the --

7 THE COURT: For how long?

8 DEFENDANT MARTINEZ: It will be a week or so  
9 because I don't know how bad she is. She is in the  
10 hospital.

11 THE COURT: Bail limits extended to include  
12 the Commonwealth Of Puerto Rico and traveling to and  
13 from Puerto Rico for the period from June 1, 1975 to  
14 July 10, 1975.

15 MR. MAHLER: Thank you very much.

16 THE COURT: That will give you plenty of time.

17 MR. KIMMELMAN: Thank you.

18 MR. MAHLER: Thank you, your Honor.

19 \* \* \*

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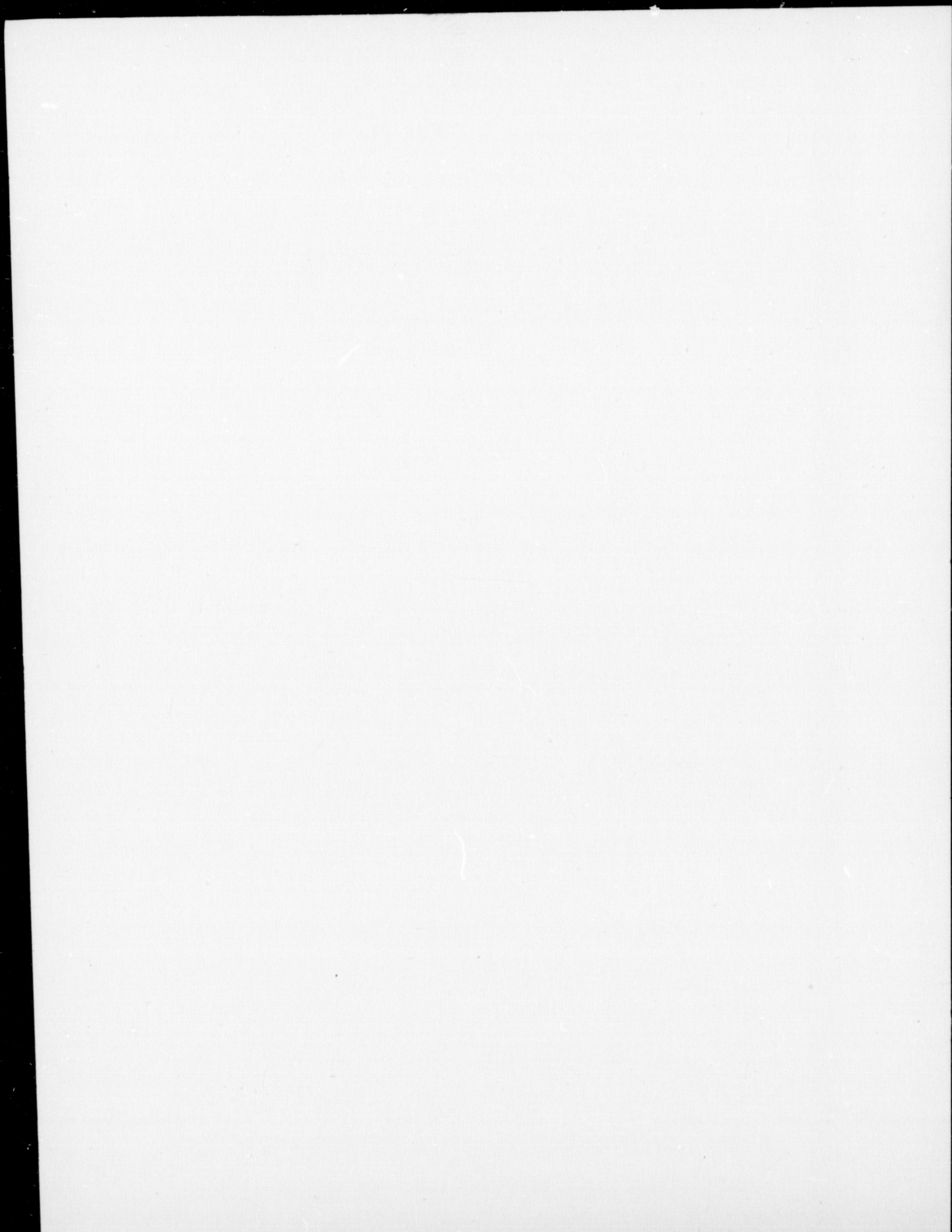
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*M. S. V. Diems - Waller*

STATE OF NEW YORK )  
: SS.  
COUNTY OF RICHMOND )

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the *30* day of *July*, 1975 deponent served the within *Appendix* upon *M. S. Attorneys*

attorney(s) for *Appellee*

in this action, at *225 Cadman Plaza East*  
*Brooklyn, NY*

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

*[Signature]*

ROBERT BAILEY

Sworn to before me, this  
*30* day of *July*, 1975.

*[Signature]*  
WILLIAM BAILEY

Notary Public, State of New York  
No. 43-0132945

Qualified in Richmond County  
Commission Expires March 30, 1976